

FINAL REPORT

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(ab) "offense" means conduct for which a term of imprisonment or a fine is authorized by a federal statute, or would be if federal jurisdiction existed;

(ac) "official action" means a decision, opinion, recommendation, vote or other exercise of discretion;

(ad) "official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with any such proceeding;

(ae) "person" means a human being and a corporation or organization as defined in section 409;

(af) "public servant" means an officer or employee of a government or a person authorized to act for or on behalf of a government or serving a government as an adviser or consultant. The term includes Members of Congress, members of the state legislatures, Resident Commissioners, judges and jurors;

(ag) "reasonably believes" designates a belief which is not recklessly held by the actor;

(ah) "recklessly" and variants thereof designate the standard prescribed in section 302(1);

(ai) "section" means a section of this Code; "subsection" or "paragraph" refers to a subsection or paragraph of the section or subsection, as the case may be, in which the term is used;

(aj) "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ;

(ak) "state" includes Puerto Rico, the Canal Zone, the District of Columbia, American Samoa, Guam, the Virgin Islands, Johnston Island, Midway Island, Wake Island, and Kingman's Reef and any other territory or possession of the United States;

(al) "think of value" means a gain or advantage, or anything regarded, or which might reasonably be regarded, by the beneficiary as a gain or advantage, including a gain or advantage to any other person. "Thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests or anything else the primary significance of which is economic gain;

(am) "United States", in a territorial sense, includes all

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states and all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone;

(an) "United States," when not used in a territorial sense, means government, as defined in paragraph (m), of the United States.

*Comment*

Words and phrases that are commonly used throughout the Code, for which statutory definition is necessary or desirable, are defined in this section. When a word is used in only one section or chapter, it is defined, if at all, in that section or chapter. Words used only a few times are cross-referenced.

The noteworthy feature of these definitions is that, in general, the words are not limited to federal contexts, *e.g.*, a public servant is one who works for *any* government. Limitations to the federal context are made where the federal jurisdictional base is set forth, or by use of the term "federal" before the word. The approach of this Code is to distinguish the definition of harmful conduct from the designation of which government has the power to prosecute for such conduct. Separately stating the federal aspect of a word also clearly differentiates when culpability is or is not required. For example, in § 1361 (bribery), the person must know he is buying action of a public servant (culpability is required under § 302(3)(a) as to this fact); but he need not know that the public servant worked for the federal government (culpability is not required under § 302(3)(c) as to a jurisdictional fact).

Also to be noted is that, although the definition of "offense" embraces state offenses, the conduct must be such as would also constitute a federal offense if federal jurisdiction were present. The line between felonies and misdemeanors is drawn according to the manner in which comparable federal conduct would be punished.

Comment concerning definitions in this section, and references to more detailed comment in the Working Papers, will be found in the comment to the section in which the term or phrase has its principal use.